

Minutes of the Board of Adjustment meeting held on Monday, February 8, 2010, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Joyce McStotts, Chair
Jonathan Russell, Vice-Chair
Wendell Coombs, Jr.
Connie Howard
Chad Wilkinson, Community Development Planner
Tim Tingey, Community & Economic Development Director
G.L. Critchfield
Citizens

Excused: Rosi Haidenthaller

There was a staff review meeting held where the Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

APPROVAL OF MINUTES

Joyce McStotts asked for additions or corrections to the minutes of January 11, 2010 and indicated one correction. Wendell Coombs made a motion to approve the minutes as corrected. Connie Howard seconded the motion.

Voice vote was taken. Minutes approved 4-0.

Joyce McStotts explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property, is based on state outlined criteria, and that financial issues are not considered a hardship.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda.

CASE #1398 – GEORGE FENSTERMACHER – 42 West Creek Drive

George Fenstermacher was present to represent this request. Chad Wilkinson reviewed the location and request for a variance for an attached covered patio cover built on the property without building permits. Murray City received a complaint regarding the structure on November 18, 2009. A notice was sent to the property owner indicating the need for proper permits for the structure. Upon receipt of the application for a building permit in January, it was found that the structure does not meet the minimum setback requirements for the R-1-8 zoning district. The structure is located approximately 12 inches from the side property line. Murray City Code Section 17.100.080(B) requires a minimum side yard width of 8 feet and the minimum total width of the two required side yards is 20 feet. The opposite side yard is approximately 14 feet wide for a total width of 15 feet. The requested variances are to the minimum width standard to allow a setback of one foot instead of 8 feet, and to the total width standard to allow a total width of 15 feet instead of 20 feet. Mr. Wilkinson commented that the requirements for granting a variance must prove some type of a hardship or unique circumstances. He stated that setbacks were established for safety, fire codes and proper access and prevent spread of fire and aesthetics. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community & Economic Development staff finds that the proposal does not meet the standards for a variance.

George Fenstermacher, 42 West Creek Drive, stated that his ignorance and over enthusiasm caused him to put "two carts in front of the horse", first was building the structure and second was not knowing that there was a zoning problem that existed and this was a hobby for him. He stated that he desired to have shade and protection from the weather on this side of the home. He stated that he spoke with the neighbor to the east who did not indicate an objection. He stated the neighbor to the west has a similar structure that was constructed prior to Mr. Fenstermacher moving to this home. He stated that he would like to leave the new addition if possible and it looks nice. He stated that he has not violated the "spirit" of constructing this addition, nor does it cause an eye sore.

Joy DeJong, 48 West Creek Drive, stated she is the adjacent neighbor to the west of Mr. Fenstermacher. She stated that everyone breaks the law in one way or another whether it is a driving violation, etc. and evidentially the enclosed patio addition to their home, which was about 45 years ago, is also in violation and is 1-2 feet from the property line. They constructed the enclosed patio because the ball games at the adjacent ball field were loud and often times balls would come into their yard. She stated that any given neighborhood has structures that are in violation of the code.

Martin DeJong, 48 West Creek Drive, stated his subdivision was housing for veterans in World War II. He stated he built his patio the same day the LDS Stake farm barn burned down on 6200 South 300 West. He indicated that all of the seven families that previously lived in Mr. Fenstermacher's home have had no complaints. He stated if he is required to tear his patio down, he will take photos of all the other structures that are not in compliance with the city code.

George Fenstermacher stated that if he is required to remove the patio addition, he will do so.

Jonathan Russell commented that the patio is nice looking and Mr. Fenstermacher has done a good job. He stated that these types of situations are difficult for the Board because it is the Board's responsibility to try to help citizens utilize their property to the best of their ability, but it is difficult to grant permission after the structure has been built in violation. Granting a variance would cause a precedent that is not desirable for the city. He stated there are other structures throughout the city in violation of the code, but the city must respond to complaints once the complaint has been made. He stated that ignorance is not a hardship.

Jonathan Russell made a motion to deny the variance as requested because the criteria for granting a variance has not been met. Seconded by Wendell Coombs.

Call vote recorded by Chad Wilkinson.

A Ms. McStotts
A Mr. Coombs
A Ms. Howard
A Mr. Russell

Motion passed 4-0.

Wendell Coombs made a motion to approve the Findings of Fact for Case #1398, George Fenstermacher. Seconded by Connie Howard.

Call vote recorded by Chad Wilkinson.

A voice vote was taken. Motion passed 4-0.

Meeting adjourned.

Tim Tingey
Director of Community & Economic Development